760

SUPREME COURT OF THE UNITED STATES.

No. 76.

ADAM S. MILLS, ET. AL., PLAINTIFFS IN ERROR,

vs.

WILLIAM G. BROWN ET AL., AND THE COUNTY OF ST. CLAIR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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S. D. Langtree, Print.

STATE OF ILLINOIS, *Supreme Court, ss.*

Be it remembered, that heretofore to wit, on the day of A. D. 18 , Adam L. Mills, John H. Gay, Charles Mullikins, John O'Fallan, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A., Christy, Elizabeth Christy, Mary F. Christy, (which Maline is the widow and which Jos. A., Elizabeth and Mary F. are the only children and heirs of Samuel C. Christy deceased,) said children being infants, and appearing by said Maline their next friend, Emily Pratt widow of Bernard Pratt deceased, Emilie his daughter, wife of Ramsy Crooks, *Ramsy Crooks*, Bernard Pratt, son of said Bernard deceased, Louis Pregnet and Therese his wife, which Therese is also a daughter of said Bernard Pratt deceased, Stephen F. Neidlet and Celeste his wife, she being also a daughter of said Bernard Pratt deceased, Louis V. Bogy and Pelagei his wife, who is also a daughter of said Bernard deceased, and Joseph Blaind Diana his wife, which Diana is a daughter of said Bernard deceased, by their attorney, filed in the clerk's office of the supreme court of the State of Illinois, the transcript of a record from the circuit court of St. Clair county, which transcript is in the words and figures following, to wit:

Pleas before the honorable Sidney Breese, judge of the second judicial circuit for the State of Illinois, and presiding judge of the circuit court, for and within the county of St. Clair, State aforesaid, in chancery, begun and held at the court thereof in Bellville, on the first Monday of November, special term, A. D., eighteen hundred and thirty-nine, and of the Independence of the United States of America the sixty-fourth.

ST. CLAIR COUNTY, *ss.*

Be it remembered, that heretofore to wit, on the fourth day of May, A. D. eighteen hundred and thirty-nine, Adam L. Mills, John H. Gay, Charles Millikin, John O'Fallan, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, (which Melanie is the widow and which Jos. A., Elizabeth and Mary F. are the only children and heirs of Samuel C. Christy deceased,) said children being infants, and appearing by said Melanie their next friend, Emily Pratt, widow of Bernard Pratt deceased, Emilie his daughter, wife of Ramsay Crooks, Ramsay Crooks, Bernard Pratt, son of said Bernard deceased, Louis Pregnet and Therese his wife, which Therese is also a daughter of said Bernard Pratt deceased, Stephen F. Nudlet and Celeste his

wife, she being also a daughter of said Bernard Pratte deceased, Louis V. Bogy and Pelagin his wife, who is also a daughter of said Bernard deceased, and Joseph Blain and Diane his wife, which Diane is also a daughter of said Bernard deceased, filed their bill of complaint in the clerk's office of said circuit court against William G. Bruen, John D. Hughes, James Anderson, William Penn, and Charles Sargent, which said bill is in the words and figures following, to wit:

To the honorable Sidney Breese, Judge of the Second Judicial Circuit.

Humbly complaining, shew unto your honor, your orators, Adam L. Mills, John H. Gay, Charles Mullikin, John O'Fallan, William C. Wiggins, Andrew Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, Melanie Christy, which Melanie is the widow, and which Jos. A., Elizabeth and Mary F. are the only children and heirs of Samuel C. Christy deceased, said children being infants and appearing by said Melanie their next friend, Emily Pratt widow of Bernard Pratt deceased, Emily Pratt his daughter, wife of Ramsay Crooks, Ramsay Crooks, Bernard Pratt, son of said Bernard Pratt deceased, Louis Peugnit and Therese his wife, which Therese is also a daughter of said Bernard Pratt deceased, Stephen F. Niedlet and Celeste his wife, she being also a daughter of said Bernard Pratt deceased, Louis V. Bogy and Pelagie his wife, who is also a daughter of said Bernard Pratt deceased, and Joseph Blain and Diane his wife, which Diane is a daughter of said Bernard deceased; that the claim to a tract of land containing four hundred acres, lying east of the Mississippi river, and fronting the town of St. Louis in Missouri, was confirmed to Piere Codain and his legal representatives by act of Congress of the sixteenth day of April, in the year eighteen hundred and fourteen, whereby the title in fee simple to said tract of land, was vested in Nicholas Janot, purchaser and assignee of Joseph Condaire, son and only heir of said Piere Cardaire, is situated in St. Clair county in Illinois; and which said tract of land has been surveyed and located by the United States, and is bounded south by the Cahokie commons, on the west by the Mississippi river, extending northwardly to a point, (nearly) opposite the centre of Bloody Island, and bounded eastwardly by the Cahokie creek or river L'Abbee; that said Joseph Condaire, conveyed the same tract of land to said Janott, by deed dated, the seventeenth day of April, in the year eighteen hundred and nine, and that the same land was conveyed by Julie Janot widow of said Nicholas, being thereto duly empowered by the last will of said Nicholas to Samuel Wiggins, by deed, dated the thirteenth day of July, in the year eighteen hundred and twenty-two; that said Samuel Wiggins by his deed, dated the first day of August, in the year eighteen hundred and thirty-one, conveyed the same land to said John O'Fallon, Adam L. Mills, Bernard Praatt now deceased, William C. Wiggins, Samuel C. Christy and Charles Mullikin; that

said John O'Fallan has sold a part of his interest in said land and conveyed the same by deed to John H. Gay; and the said Mills, hath likewise sold a part of his interest in said land to Andrew Christy, and given his title, bond, therefor; copies of which said several instruments of writing and conveyances, are hereto annexed, and prayed to be taken as part of this bill, as also the said survey, and also copies of original documents and proofs, and proceedings in relation to said Condain's claim, from the United States land office at Kaskaskia, in Illinois; that said Bernard Pratt and Samuel C. Christy, are both dead, leaving their only heirs and representatives, as to said land the persons alone named as such in this bill; your orators further state, that said Piere Condaire settled upon said land, and lived upon it many years before said conformation, and that on his death, his only son Joseph, likewise claimed and conveyed the same as aforesaid; that said Nicholas Janot, while the owner thereof, exercised acts of ownership over it as his own, and the said Samuel Wiggins soon after he acquired his title as aforesaid, took possession of it, and continued in possession thereof, as your orators are informed and believe, claiming as his own till he conveyed the same as aforesaid; and that ever since his said conveyance, his (the said Wiggins) grantees, being the persons above named, as such took possession of the same tract of land and the possession of the same, has remained in them, and those claiming under them, until the present time, and that your orators are now in the exclusive possession of the tract claiming to own it in fee simple, and as they fully believe and so charge, being the undoubted owners thereof in fee simple.

Your orators and oratrix' further state that the said tract of land is bounded on the east by the Mississippi river, perhaps a mile; and that the right and advantage of ferrying therefrom and of landing thereon is of great value, as the city of St. Louis lies opposite, on the west side of the river; and that a ferry has been owned, conducted and crossed over by the owners of said tract, from the said tract across the Mississippi, from the time when the said Samuel Wiggins acquired the said land as aforesaid down to the present moment, to their great gain and emolument. Your orators and oratorix' further represent that on March second, in the year eighteen hundred and nineteen, an act was passed by the General Assembly of the State of Illinois, entitled an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi, a copy of which act is herewith exhibited as part of this bill; and that in pursuance thereof he, said Wiggins, did establish a ferry on said tract within the time limited by said act, which ferry has been kept up according to said act ever since; and was transferred by him in his said deed of the tract aforesaid, and since then has been kept up and conducted by his the said Wiggins's grantees, the owners of said land, to this day, and is now conducted by your orators and oratrix', at great labor and expense, for the accommodation of the public; which ferry has been always

and is near the town of Illinois in the State of Illinois, and was commenced by said Wiggins from lands that belonged to him; and while he owned it, was always run and conducted from land owned by him, and ever since he transferred it, it hath been always run from lands owned by the proprietors of said ferry, and is now run by your orators and oratrix' from the same tract of land, to wit, the tract above described; and that said ferry hath always been managed and conducted by such boats as were propelled by horses or steam. And they further state that a piece of said tract of land lying on the Mississippi, near the centre of said tract, was claimed by one James Piggot, which claim was recognized by government, and a patent issued therefor; and that said Wiggins acquired this piece several years before the date of the deed from Julia Janot to him, and first established his said ferry on this piece, then being the owner thereof, under said Piggott's legal representatives; which piece of land is included in the larger tract of Condain, and was patented by the United States to John McKnight and Thomas Brady, in eighteen hundred and sixteen, and conveyed by them to Samuel Wiggins by deed, copies of which papers and deed are herewith exhibited and prayed to be taken as parts of this bill of complaint; and they further set forth that by the act aforesaid the right was expressly conferred on said Samuel Wiggins, his heirs and assigns, to establish and run a ferry from his lands on the Mississippi, near said town of Illinois, forever; provided no craft or boat should be used but what should be propelled by horses, oxen, or other four-footed animals, or steam; and by the second section of said act it was provided that no person, except those who had their ferries established at that place, should established any ferry of said description, within one mile of the said Wiggins's ferry, and that if any ferry were established, in contravention of that act, the boat or boats should be forfeited to said Wiggins, his heirs or assigns, and might be attached before any court in Illinois having competent jurisdiction. Your orators allege and charge that though the General Assembly have passed an act purporting to repeal said second section, yet that the right of ferrying remains both as at common law and as conferred and guaranteed by said act, which right is of great value to your orators and oratrix', and is protected both by the constitution of Illinois and of the United States, and cannot be legally infringed, taken away or destroyed, without the consent of your orators and oratrix', who are the successors of said Wiggins and his assigns, according to the true intent and meaning of said act; and the owners of said land, and of all the said Wiggins's right and privilege, whether by said statute or otherwise, to ferry therefrom; and your orators and oratrix' have been and are conducting said ferry in strict conformity with the requirements of said act and to the full accommodation of the public, and have invested in it, upon the full assurance of their right, a great amount of capital, relying upon the law of the land for protection and safety in the enjoyment of their own property and

privileges, and they well hoped that they would remain undisturbed in the exercise of their undoubted privilege, and be permitted to receive the profits of their exertions and outlay for the accommodation of the public. But your orators and oratrix' state that in this they have been disappointed, and that without their consent, and contrary to their wishes, an act was passed by the said General Assembly on the second day of March, eighteen hundred and thirty-nine, entitled "An act to authorize St. Clair county to establish a ferry across the Mississippi river," whereby William G. Brown, John D. Hughes, James Anderson, William Penn and Charles Sargent, of St. Clair county, were appointed commissioners, and were required to examine the ground and locate a road and ferry landing between Cahokie creek and the Mississippi river, opposite St. Louis; and it was thereby further enacted that said road and ferry landing should be located, three hundred feet wide, on the most eligible ground for said purpose; and that said road and ferry landing, when so located, and the report of said commissioners filed in the office of the county commissioners' court of said county of St. Clair, should be and remain a public highway forever; and that the county commssioners' court of said county might cause said land, on which said road and ferry landing should have been located, to be condemned, and pay to the legal owners of said land the damages sustained by said owners; and if the said land should be condemned, and said damages paid out of the funds of the county, the said commissioners' court should have power, by their agents or otherwise, to enter upon said land so condemned, and establish a ferry across the Mississippi river, and that said county commissioners' court might either carry on said ferry for the county itself, or it might lease the same, for any term not exceeding five years at any one time, to any persons; and it was furthermore enacted by said act, that for the purpose of compensating the legal owners for the land thus appropriated for public use, it should be the duty of the commissioners' court aforesaid to cause the sheriff of St. Clair county to summon twelve men, who should assess the damages which such owners of the land might sustain by reason of the location of the said road and ferry landing. And your orators and oratrix' further state that the said commissioners, William G. Brown, John D. Hughs, James Anderson, William Penn and Charles Sargant, have, under color of said last mentioned act of Assembly, proceeded and laid out and located the said road, *the said road*, three hundred feet in width, across the said tract of land, so owned by your orators and oratrix' as aforesaid, confirmed to said Condain's legal representatives, to the Mississippi river, comprehending three hundred feet in width of the landing on said river belonging to your orators and oratrix', and have made their report to the said county commissioners' court, which is filed, as they believe, in the office of the clerk of the same; and your orators and oratrix' are informed and believe that a meeting of said county commissioners' court has been, or will immediately be, called for the of condemning said piece of

land so located, and of carrying out the said last mentioned act of Assembly, and thus of taking from your orators and oratrix' their property and valuable right against their will, and that too, as they believe, without any means of their obtaining adequate compensation therefor.

Your orators and oratrix' invoke the aid of the Constitution of the United States and of the State of Illinois and of the sacred principles of law and justice against this attempt which they charge to be a most manifest violation of their rights under the pretended sanction of law. Your orators and oratrix' alledge that under the laws and constitution of the country, the right does not exist thus to seize their property and take it from them for the very purpose of using it for the objects for which your orators are using it, and for which use of it they have an express irrepealable Act of Assembly, and further, that if under said last mentioned Act of Assembly were constitutional in every respect, (which is denied utterly,) yet that it provides a mode of assessment of damages and of compensation for said land altogether unjust, inequitable, and against fundamental principles, in this, that the very party that acquires the benefit and emolument of said right of way and ferry, is made the judge of the amount of compensation, inasmuch as the jury is to be called from the county of St. Clair in order to assess the damages, and the rev enues derived from said way and ferry belong to said county, who by this Act of Assembly are to acquire for their benefit the contemplated ferry are to pay your orators and oratrix' in purchase of the same, such price as the same citizens choose to put upon it; and your orators and oratrix' further charge, that said act doth not authorize, as they understand it, any damages or compensation to them for the great injury to their vested rights of ferrying now in use by them from their own land which must inevitably result from the establishment of another ferry at their side from the same land, nor does it allow any compensation for the great injury to them on account of the diminution of the value of the residue of said land and right of ferrying by the establishing of a rival ferry at their side. And they charge generally, that said act is unconstitutional, that the proceedings of the said commissioners is illegal, inequitable, and oppressive, and will work if permitted to go on irremediable mischief to your orators and oratrix', who possess undoubted statutary as well as common law privilege of ferrying from their said land, if using their own property in every way profitable to them which is not forbidden by the laws; your orators and oratrix' further allege that by an act of Assembly of the said State of Illinois, passed the sixth day of February, in the year of our Lord one thousand eight hundred and twenty-one, entitled an act to authorize Samuel Wiggins to make a turnpike road and for other purposes, the said Wiggins, his heirs and assigns were authorized to remove the ferry which said Samuel Wiggins had established as aforesaid upon any land that might belong to him or them on the said Mississippi river under the same privileges as were prescribed by said act

of March second, eighteen hundred and nineteen, which act of February sixth, eighteen hundred and twenty-one, conferred the said previlege of removing said ferry absolutely without the reservation of the right to repeal the same, a copy of which act is hereto annexed as a part of the bill; and that said Samuel Wiggins, while owner of said ferry and his said successors in the owership of the same, have kept up said ferry and maintained and run the same in strict conformity with said act granting the said privileges, and with the law and to the great advantage of the public which has been and still is well served and accommodated thereby, and your orators and oratrix' well hoped that they should have been permitted to enjoy their said ferry privileges in peace as they had a right to do; but now so it is that the said William G. Brown, John D. Hughes, James Anderson, William Penn and Charles Sargent and the said county of St. Clair combining and confederating with divers other persons whose names, when discovered, your orators and oratrix' pray may be inserted herein, and they made parties hereto, have proceeded as above detailed in regard to said road and ferry landing of three hundred feet in width, and are now about to appropriate the same to the use and emolument of said county as aforesaid, under color of the act of Assembly in that behalf above stated, all which actings and doings are against equity and good conscience. To the end therefore that the said county of St. Clair and the said abovenamed commissioners, may true, full, and perfect answers make to all the matters aforesaid, in as full and ample a manner as if the same were here again repeated and interrogated, and that they, their advisers, abettors, associates, servants and agents, and the said county commissioners may be restrained from proceeding to condemn said land so located as a road of three hundred feet in width, and from further proceedings under said act to enter upon or molest your orators and oratrix' in their procession and use of their said land and ferry, and may be perpetually enjoined therefrom by the decree of this honorable court, and that they may have such further and other relief in the premises as to your honor may seem meet; may it please your honor to grant a writ of subpœna commanding said Brown, Hughs, Anderson, Penn and Sargent, and the said county of St. Clair, to appear and answer said bill and abide by such decree as may be made in the premises, and also the writ of injunction directed to them and the said county commissioners, commanding them and each of them, their servants and agents, to refrain from further proceedings under said act in regard to said road and ferry landing, and the said county from condemning the same and from entering on the same, or having the right of ferry therefrom. And your orators and oratrix' will ever pray, &c. April 30, 1839.

ADAM S. MILLS, *Agent and owner of the St. Clair and St. Louis Ferry.*

STATE OF ILLINOIS, *St. Clair County, ss.*

Adam S. Mills being duly sworn on his oath saith, that he is one of the complainants in above bill, and the acting agent of all the other complainants; that the matters and things stated in the said bill of complaint as of the knowledge of said complainant are true, and those stated as matters of hearsay or belief, he believes to be true.

Given under my hand and seal this second day of May, 1839.

JOSHUA T. BRADLY, *J. P.*
Clinton County Ill.

On reading and considering the within bill it is ordered that an injunction be granted according to the prayer thereof, the clerk of the St. Clair circuit court will accordingly issue a writ of injunction directed to the said William G. Brown, John D. Hughes, James Anderson, William Penn, and Charles Sargent, and the county commissioners of St. Clair county, their servants, agents, attornies, workmen and others, to enjoin and restrain them and every of them from proceeding to establish a ferry as within complained of until the further order of the circuit court of St. Clair county upon the complainant in behalf of himself and the other owners of the ferry named in this bill, entering into bond in the penalty of five thousand dollars, with William Kinney or Vital Janot his security, conditioned to pay to the county of St. Clair all damages occasioned by granting this injunction. Should the same upon a hearing of the merits be dissolved, the said commissioners, Hughes and others, are not enjoined hereby from proceeding to locate the road and assessing the damages occasioned thereby.

Given under my hand as judge of the second judicial circuit of the State of Illinois, and presiding judge of the St. Clair circuit court, at Chamber, in Clinton county, this 3d day of May 1839.

SIDNEY BREESE.

And thereupon the said complainant for himself and as agent of the other complainants, having filed his bond according to the above order of the judge, a writ of injunction was issued in the words and figures following, to wit:

STATE OF ILLINOIS, *St. Clair County, ss.*

The people of the State of Illinois to William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent and the county commissioners of the county commissioners court of said county, and their workmen, laborers, servants and agents each and every of them, greeting:

Whereas Adam L. Mills on behalf of himself and of the owners of the St. Clair and St. Louis ferry has lately exhibited his bill of complaint to the judge of the circuit court in and for the county and State aforesaid on the chancery side thereof against you the

said William G. Brown, John D. Hughes, James Anderson, William Penn and Charles Sargent and the county commissioners of the county commissioners court of said county, defendants, wherein, among other things, it is alleged that you are proceeding to establish a ferry landing between Cahokie creek and the Mississippi river opposite to St. Louis, and also a ferry across said river at said place. We, therefore, in consideration of the premises, do strictly enjoin and command you the said William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent and the aforesaid county commissioners, and all and every the persons above mentioned, that you and each of you do absolutely and entirely desist from proceeding to establish a ferry between Cahokie creek and the Mississippi river, opposite to St. Louis, to cross the said river, and hereof fail not under the penalty of what the law directs.

To the sheriff of said county to be executed.

Witness John Hay, clerk of the said court at Bellville, [L. S.] this sixth day of May, in the year of our Lord eighteen hundred and thirty-nine.

JOHN HAY.

And thereupon on the third Monday of August, A. D. 1839, the sheriff returned the said writ, with the following endorsement thereon:

"On the 6th day of June, I served this injunction on each and every of the within named person, by leaving them a copy of the within injunction.

S. B. CHANDLER, *S. C. C.*

MONDAY MORNING, 19th August, 1839.

ADAM L. MILLS and others,
vs.
WILLIAM G. BROWN and others.

Now this day came as well the said defendants, their L. Trumbull their attorney, and the said complainant, by Shields and Kœrnor, their solicitors, and the said defendants, by their said attorney, come and file their demurrer, which is in the words and figures following, to wit:

In Chancery in the St. Clair Circuit Court, August Term, 1839.

The demurer of William G. Brown and others, defendants to the bill of complaint of Adam S. Mills and others, complainants.

The defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said

bill, and for cause of demurer show that the said complainants have not by their said bill made such a case as entitles them in a court of equity to any discovery from these defendants respectively or any of them or to any relief against as to the matters contained in said bill or any of such matters and that any discovery which can be made by these defendants, or any of them touching the matters complained of in said bill or any of them cannot be of any avail to the said complainants for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle said complainants to any relief in this court touching any of the matters therein complained of, thereupon and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

LYMAN TRUMBALL,
Of counsel for defts.

To which demurrer the complainant, by their solicitors, join in the words and figures following, to wit:

And the said complainants say that the bill aforesaid and the matters and things therein contained, are sufficient to entitle the said complainants to a discovery from the said defendants in a court of equity and relief against the said defendants, and pray that the said defendants be compelled to make further and other answer as heretofore prayed by said complainants.

JAMES SHIELDS, and
GUSTAVUS P. KŒRNER,
Of attorneys for complainants.

And thereupon this case is set for the first day of November, special term, to which day the cause is continued.

MONDAY MORNING, 4th November, 1839.

ADAM L. MILLS and others,
vs.
WILLIAM G. BROWN and others.
} Continued from last term on demurrer.

And now this day came the complainants, by Shields, Gamble and Logan, their attorneys, as the defendants, by Reynolds and Trumbul, argument entered into on the demurrer, continued for further argument to-morrow morning.

TUESDAY MORNING, 5th November, 1839.

ADAM L. MILLS and others,
vs.
WILLIAM G. BROWN.

The parties having closed their argument the court takes further time to advise on.

MONDAY MORNING, 11th November, 1839.

ADAM L. MILLS et others,
vs.
WM. G. BROWN and others, and the County Commissioners, &c.

And now this day came the parties by their said attornies, and the court being now fully advised on the argument submitted on the demurrer aforesaid, it is the opinion of the court that the defendants' demurrer be sustained, and the bill be dismissed at the costs of the complainants. It is therefore considered by the court that the said defendants recover against the said complainants their costs in this behalf expended, &c. and thereupon the said complainants, by their said attorney, come and pray an appeal, which the court allow on the complainant, Adam L. Mills, entering into bond with security in ten days, with James Mitchell and Benj. J. West, (whom the defendants by their attornies accept,) as security in the penalty of five thousand dollars, conditioned as the law directs.

Which bond is hereto annexed.

Amount of costs bill annexed $29 50.

STATE OF ILLINOIS, *St. Clair County, ss.*

I, John Hay, clerk of the circuit court for and within the county of St. Clair, do hereby certify that the foregoing exemplification is a true transcript of the original papers on file in this office, and of the proceedings on the record of the said court, and that the annexed bond is the original bond given for this appeal, and that the annexed fee bill is a true transcript of the original in fee bill book I, page 165.

In testimony whereof, I have hereunto set my hand and seal of said court, at office, in Bellville, this thirtieth day of November, A. D. eighteen hundred and thirty-nine, and of the Independence of the United States of America the sixty-fourth.

JOHN HAY.

ADAM L. MILLS and others, *vs.* WM. G. BROWN and others. } St. Clair Circuit Court, November Special Term, 1839.

1839.

May 6,	Filed 11 documents 68¾, take bond 50, filing 6¼, filed bill 6¼ - - -	1 31¼
	Writ judgment 50, filed 6¼, dock. 12½, ent. sheriff return 12½, plaintiff's attorney 12 - - - -	93¾
Aug.	Appeal 12½, filed demurrer 6¼, pl. join. 6¼, filed motion to disch. 6¼, cont. 25, -	56¼
Nov.	Dock. 12½, ent. jr. 25, motion for appeal 25, taking appeal bond 50, filed 6¼ -	1 18¾
	Bill cost 37½, copy 25, compl. record 58, fo. a 12½, 7 25, certificate and seal 50 -	8 37½
		12 37½
	Docket fee - - - - -	5 00
	Sheriff,	
	Serving eight persons 4 00, return 12½, 8 copies 50 cents 4 00, mileage 64, 4 00 -	12 12½
		$29 50

A true copy.

JOHN HAY, *Clerk.*

Copies of documents and exhibits filed in the case of Adam L. Mills, John H. Gay, Charles Mullikin, John O'Frallon, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary S. Christy, (which Melanie is the widow) and Joseph A., Elizabeth and Mary T., are the only children and heirs of Samuel C. Christy, deceased, said children being infants, and appearing by said Melanie, their next friend; Emily Pratte, widow of Bernard Pratte, deceased; Emilie, his daughter, wife of Ramsay Crooks, Ramsay Crooks, Bernard Pratte, son of said Bernard Pratte, deceased; Servie Peugnet and Therese his wife, which Therese is also a daughter of said Bernard Pratte, deceased; Stephen T. Neidlet and Celeste his wife, she being also a daughter of said Bernard Pratte, deceased, and Joseph Blain, and Diana, his wife, which Diana is a daughter of said Bernard Pratte, deceased, and Louis V. Bogy and Pelagie his wife, who is also a daughter of said Bernard Pratte, deceased, on a bill of injunction against William G. Browne, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the County Commissioners of the County Commissioners' Court, of the county of St. Clair, in the circuit court of St. Clair county, in chancery, and which was subsequently by the complainants, appealed to the supreme court of this State, at the special November term of the St. Clair county circuit court,

which documents and exhibits are referred to in the aforesaid bill.

Document No. 1.

To the Honorable Board of Commissioners of the United States Land Office, sitting at Kaskaskia :

The humble petition of Joseph Condarie, humbly sheweth, that your petitioner is a poor man and loaded with a heavy family, and came all the way from Canada here to join my father since six years past. Whereupon, on my arrival here, learnt, to my great sorrow, that he was dead.

Your petitioner sometime since found out that my deceased father held an improvement, on which he lived for some years, and which he improved before the year 1790, on the eastern side of the Mississippi, opposite or near the town of St. Louis ; and that unfortunately for your petitioner, I could neither read nor write, and more so that it is but lately I found out this improvement having been made by my deceased father, Pierre Condire. And your petitioner being sole heir to the said Pierre Condaire, deceased, your petitioner prays that some indulgence will be given to him, not so much by reason of his ignorance, but on account of his large and helpless family. This said improvement your petitioner will vouch to have proven by the most respectable citizens of St. Louis and Cahokia, and thereupon relies all his hopes on your generosity and equity in getting the said improvement granted him by Congress, for whom he will ever pray for aid. At the desire of Joseph Condaire.

JOHN HAY,
Clerk of the County Court at Cahokia.

Ie certifie à tous ceux quil appertiendra, quil sot envirore veugt cinq aus. que J'ai Connu un nonenie Pre. Condaire, que resident sur la rivai gauche du Mississippi en face de St. Louis, sure une habitatione quil cultvoil, et dans et vaudait les product a St. Louis et qu'en nea connoissance et y demeuré plusiures anneèis en foi de quoi j'at delivre le present certificat a St. Louis le six Septembre, 1809.

Signed, AUGT. CHOUTEAU.

LOUISIANA TERRITORY,
District and Township of St. Louis, sct.

Before me, the undersigned, one of the justices of the peace, in and for the township aforesaid, personally came and appeared Jean Bapt. Cortes, Nicholas Hebert Lecount, and Hyacinthe S'Cel, of said district, who being duly sworn on the Holy Evangelist of Almighty God, deposes and says, that about twenty-six years they

have known a certain Pierre Condaire, who inhabited and cultivated a certain tract of land east of the river Mississippi, fronting the town of St. Louis; that said Condaire remained on the aforesaid tract during three or four years, and was then in the habit of crossing said river, and come to St. Louis to sell the produce of his land, such as tobacco, melons, and had a house built on said tract, and that said Condaire was obliged to abandon said tract in consequence of the Indians becoming troublesome.

J. B. ORTES.

his
NICHOLAS x HERBERT LECOUNT,
mark.

his
HYACINTHE ST. CIR.
mark.

Sworn to and subscribed before me, a justice of the peace in and for the township aforesaid, this 28th day of October, A. D. 1809.

Signed, M. P. LEDUC, *J. P.*

Frederick Bates, Secretary of the Territory of Louisiana, and exercising the government thereof, to all whom it may concern:

Be it known that M. P. Leduc, before whom the within subscription and oath where made, is a justice of the peace for the township of St. Louis, in the said territory of Louisiana, duly commissioned and qualified, and that his certificate is in due form. In testimony whereof I have hereunto affixed the seal of the territory.

Given under my hand at St. Louis, this 28th day of October, one thousand eight hundred and nine, and of the Independence of the United States of America the thirty-fourth.

[L. S.]

Signed, FREDERICK BATES.

Register's Office, Kaskaskia, Nov. 1, 1817.

I do certify that the proceedings from page 1 to 3, inclusive, are true copies at Kaskaskia, the 30th November, 1809, on which the confirmation of Pierre Condaire, No. 2,667 is predicated.

MICHAEL JONES,
Register.

Extract of a list of claims transmitted by Michael Jones, Register of the Land Office for the district of Kaskaskia, to the Honorable Albert Gallatin, Secretary of the Treasury of the United States, 18 January, 1813.

Statement of claims founded on actual cultivators and improvement, and the act of Congress of 3d March, 1791.

No. of Claim, 2,667.

Original Claimant,	Present Claimant,
Joseph Condaire.	Heir of Pierre Condaire.

Proof and Remarks.

Baptiste Ortes, Nicholas Herbert Le Compte, and Hyacinthe St. Cir, state, that about 26 years ago, (1783) Pierre Condaire inhabited and cultivated a tract of land east of the river Mississippi, fronting the town of St. Louis. That he remained on the said tract 3 or 4 years. That he had a house built on the said improvement, and generally sold the produce of his said farm at St. Louis.

Note.

This statement is corroborated by the certificate of Augt. Chouteau, of St. Louis.

The preceding claims appear to be founded in justice, but which have not been claimed within the time limited by law.

Kaskaskia, January 18th, 1813.

Signed, MICHAEL JONES.

Extract of a letter from Michael Jones, Register of the district of Kaskaskia, to the Hon. Albert Gallatin, Secretary of the Treasury, dated January 18th, 1813, enclosing a list of claims, including said Condaire's.

SIR: I herewith transmit a statement of claims of which no notice had been filed with the register within the time limited by law, but as these claims appear to be founded in justice I have, in compliance with the earnest solicitations of the claimants ventured to make a statement of them with the substance of testimony adduced in their support. I feel the more inclined to take this course as Mr. Backus and myself stood pledged to the claimants to do so, and as the members of the late board seemed to desire that I should make the representation myself, as being better acquainted with the circumstances and facts. Should the government confirm them it would be advisable to confirm to the original claimant as his legal representative, as the letters passed have neither been examined nor recorded by me. * * * * * *

Signed, MICHAEL JONES.

REGISTER'S OFFICE, Kaskaskia, March 6th, 1817.

I do certify that the preceding from page 4 to 6, inclusive, are true extracts from a statement of claims, and my letter dated 18th

January, 1813, transmitted by me to the Secretary of the Treasury of the United States.

MICHAEL JONES,
Register.

Document No. 2.

Par denaut les lemoius sousignés fut present au sa peisonne, Joseph Condaire de Cahokia conté St. Clair, territoire Indiana, lesquilles par ses presentes a recenna et confessé arni aujourdhui vendee, cedé, quitté, transporté et delessé desmentenant et à tonjours a Monsieur Nicholas Jarrot de Cahokia, conté susdit territoire, susdit les hors ayant cause, savoir quatre ceuts acres de terre, l'improvement situé à lest du Mississippi en face de la ville de St. Louis a enuroid quatre mille et demy an dela de Cahokia] lequll quatre cent acres de terre mentionné ont ète accordé a'son deforn, pére Pierre Condaire par une acte du Congress passe de trois de mais mil sept cent quatre vingt onge, et comme le dit Joseph Condaire est le seul huitier de son defunt pere, Pierre Condaire, lequel a parles presents vendue, ette quil venu cede, quitte, et transport et delaise, an dit Nicolas Jarrot ses hoirs ayant causes les susdit quatre cent acre to terres d'improvement mentionné pour et au dil Jarrot enfaire et disproves lin, ses hoirs, ayant causes comme choses lué, appartement a commencer la jouissance de a jourdhire, cette presente vente ainri faite pour prix et somore de cent cinquante piastres que que le dit Joseph Condaire, a a declaré et confené avouir recu content des mains de dit Nicolas Jarrot pour parfaite payment des susdie quatre cent acres de terre d'improvement mentionné, et il le deat quitte et sarvo retour, dos a quittance etant pleinenent satisfine, car ainsi convenu, &c. Traite el passe Cahokias le dix Septienne jun du mois d'avril de 'l'anne de notea seigneur, milhuit cent neuf, le dit Joseph Condaire a déclaré ne savoir signé, a fait sa marque ordinaire, et selede sou eceau le join et au clessus.

In presence des tesmonies, son signées, apres secture faite.

Signed, la JOSEPH CONDAIRE mark.

PREZ. Y. BLONDEAU,
WM. MEARS.

ILLINOIS TERRITORY, *St. Clair County.*

Be it remembered, that on this 27th day of January, 1812, personally came before me the subscriber, a justice of the peace in and for the county aforesaid, William Mears, subscribing witness to the within deed, who after being duly sworn on the Holy Evangelists of Almighty God, saith that he subscribed the within deed,

and that from his general practice of never subscribing any instrument as an asserting witness without first having the maker of said instrument to acknowledge that he made and executed it, or else seeing him first make and execute the same, and that therefore he believes he either saw said Joseph Condaire either make his, the within deed affixed, or else heard him acknowledge the same after it was executed, he does not now recollect perfectly which.

[L. S.] In testimony whereof I have hereunto set my hand and seal at Cahokia, this 27th January, 1812.

JOHN HAY, *J. P.*

Recorded in Book C, page 52, the 29th August, 1814.

JOHN HAY,
Recorder S. C.

ILLINOIS TERRITORY, *St. Clair County, sct.*

Be it remembered, that on the 4th day of August, 1815, personally came before me, the subscriber, a justice of the peace in and for said county, Dregy Blondeau, a subscribing witness to the within deed, who after being duly sworn on the Holy Evangelist of Almighty God, acknowledged and declared to have seen the within named Joseph Condaire, grant or make his ordinary mark, and put his seal thereto, and deliver the same as his act and deed to the said Nicholas Janot, of his own free will and accord, and that he verily believes that the other witness William Mears, signed the same in his presence.

[L. S.] In testimony whereof I have hereunto set my hand and seal at Cahokia, the day and year above written.

RAPHAEL WIDEN, *J. P.*

Recorded the 4th August, 1815, page 121, book C.

JOHN HAY,
Recorder.

I, Joseph Phillips, secretary of Illinois Territory, do hereby certify, that Raphael Widen, whose name is subscribed to the foregoing certificate, was at the date thereof a justice of the peace for the county of St. Clair, in the Territory aforesaid, being duly commissioned and qualified to act as such.

In testimony whereof, I have hereunto affixed the seal of of the Territory, done at Kaskaskia, the ninth day of Au-
[L. S.] gust, in the year of our Lord one thousand eight hundred and eighteen, and of the Independence of the United States the forty-third.

JOSEPH PHILLIPS.

Document No. 3.

This indenture made this thirteenth day of July, in the year of our Lord one thousand eight *hundred* and twenty-two, between Ju-

lia Janot, of the town of Kahokia, in the county of St. Clair, and State of Illinois, of the one part and Samuel Wiggins, of the county and State aforesaid, of the other part; witnesseth that the said Julia Janot, for and in consideration of the sum of two thousand dollars, to her in hand paid by the said grantee, the receipt whereof is hereby acknowledged, and from every part and parcel thereof, is herefrom acquitted and discharged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, and sell, release, and confirm, unto the said Samuel Wiggins, his heirs and assigns, forever, all her right, title, interest, claim, property, possession, and demand, whatsoever, in all that certain tract or parcel of land, being the improvement right of one Perre Canada, and located by Nicolas Janot, deceased, in his life time, opposite the town of St. Louis, in Missouri State, and known and described by the board of commissioners for adjusting land titles for the district of Kaskaskia, as claim numbered two thousand six hundred and sixty-seven, and survey numbered seven hundred and eighty-seven, as by reference thereto, had more fully and at large will appear; as also all the right, title, and claim whatsoever, that the said Nicolas Janot might have had at the time of his death, to any piece or parcel of land, being and lying on the said four hundred acre tract, or that the said Julia Janot, as heir at law of said Nicolas Janot, deceased, may now have with all and singular, the appurtenances thereunto belonging, or in any wise appertaining thereto; to have and to hold the above mentioned tract or parcel of land, within said tract as above described, together with all the privileges and appurtenances thereunto belonging to him, the said Samuel Wiggins, his heirs, and assigns forever.

And the said Julia Janot, in said tract above described or any parcel or piece of land within the said tract above described against the claim of herself, and of her heirs and assigns, claiming by, through, or under her or any of them, to the said Samuel Wiggins, his heirs and assigns, doth by these presents forever warrant and defend.

And it is hereby understood by the said parties, and it is the understanding, intent and meaning of these presents, that should the right or title of the said Nicholas Janot deceased, at the time of his death to the aforesaid tract of land, or parcel of land being in the said four hundred acre tract, at any time hereafter become or turn out to be defective, then and in that case no recourse whatever is to be had on the said Julia Janot, her heirs, executors, and administrators, by the said Samuel Wiggins, or by his heirs and assigns, any thing to the contrary in the deed notwithstanding.

In testimony whereof, I have hereunto set my hand and seal
[L. S.] the day and year above herein written.

JULIA JANOT.

Signed, sealed, and delivered, in presence of

JOHN HAY,
FRANCIS JANOT.

STATE OF ILLINOIS, *St. Clair County.*

Be it remembered, that this 13th day of July, A. D. 1822, personally came before me the subscriber, a justice of the peace, for and within the said county of St. Clair, Julia Janot, party grantor named in the within deed, and acknowledged the same to be her act and deed, and that her right and title to the premises therein mentioned is the right and estate of Samuel Wiggins, party grantee also named therein, and his heirs and assigns, forever.

Taken and acknowledged before me the date aforesaid.

JOHN HAY, [L. S.]

STATE OF ILLINOIS, *St. Clair County.*

I, John Hay, recorder of the said county of St. Clair, do certify, that on the twenty-fourth day of January, A. D. 1823, I truly recorded the within deed of conveyance in E, page 157.

Given under my hand, at my office in Belleville, the day and year above written.

JOHN HAY.

Document No. 4.

This deed made the first day of August, in the year of our Lord one thousand eight hundred and thirty-one, by and between Samuel Wiggins, and Cornelia his wife, of the city of St. Louis, in the State of Missouri, of the first part, and John O'Fallen, Adam L. Mills, Bernard Pratte, Charles Mullikens, and William C. Wiggins, of the same city, and Samuel C. Christy, of Illinois, parties of the second part; witnesseth, that the said parties of the first part, for and in consideration of the sum of thirty-five thousand and one hundred and twenty dollars, to them in hand paid at and before the ensealing and delivery hereof, have in consequence of such sum so paid them by said parties of the second part, given, granted, sold, aliened, confirmed, enfœffed, and conveyed, and do hereby grant, sell, alien, confirm, enfœff, and convey, unto said parties of the second part, the following described lands, tenements, hereditaments, rights, privileges, and personal property, namely a tract of land containing four hundred acres, lying in St. Clair county, in the State of Illinois, on the banks of the Mississippi river, opposite to the city St. Louis, being a location made by Nicolas Janot, and described by the records of commissioners for adjusting land titles for the district of Kaskaskia, as claim numbered two thousand six hundred and sixty-seven, and survey numbered seven hundred and eighty-six, being the same tract which was conveyed to said Samuel Wiggins, by Julia Janot, by deed dated the thirteenth day of July, in the year eighteen hundred and twenty-two, recorded in the recorder's office of the said St. Clair county, in book E, page 157, portions of which said four hundred acre tract, have likewise been conveyed to said Samuel Wiggins, by John McKnight and Thomas Bra-

dy, by deed dated nineteenth of May, in the year eighteen hundred and twenty-one, who obtained patent from the United States, therefor, which deed is recorded in said recorder's office, in book E, pages 48 and 49, and by James Piggott, Zacheus Piggott, and Elizabeth Piggott, by deed dated the fourth March, in the year eighteen hundred and twenty, recorded in said recorder's office book D, pages 70, 71 and 72, and by Ninian Edwards and wife, by deed dated the first day of October, in the year eighteen hundred and twenty-seven, recorded in said recorder's office, book F, pages 76 and 77, and by David Coons, by deed dated the fourteenth of June, in the year eighteen hundred and twenty-three, recorded in said recorder's office book E, pages 185 and 186, and also by John Scott and wife, and by John Boly, who have executed deeds to said Wiggins; also three hundred and sixty-nine acres, and twenty-two hundredths of an acre of land, lying in said county of St. Clair, comprising the southwest fractional detached part of the southwest quarter of section thirty-six in township three, north of range ten west, and fractional sections on two, eleven and twelve, in township two north of range ten west, bounded south by land confirmed to Nicholas Janot, and west by the Mississippi, lying nearly opposite to the city of St. Louis, having been patented by the Government of the United States to Nelson Pepper, and by him conveyed to Samuel Wiggins, by deed dated the sixth of October, in the year eighteen hundred and twenty-seven, recorded in said recorder's office, in book F, pages 289 and 290, also an island opposite the upper part of the city of St. Louis, conveyed to said Wiggins.

The party of the first part, by two patents issued by the United States, the one for fractional section eleven, in township two, north of range ten west, in the district of Edwardsville, and State of Illinois, containing one hundred and twenty-eight acres and eighty-six hundredths of an acre; the other for a fractional section two, in township two, north of range ten west, containing three acres and forty-seven hundredths of an acre, lying in the same district and State, which two patents are dated the ninth day of June, in the year of our Lord one thousand eight hundred and twenty-five; also a tract of land conveyed to said Wiggins, party of the first part, by Thomas Osborne and wife, by deed dated the eighteenth day of March, in the year eighteen hundred and twenty-nine, which tract is decribed as follows: a certain tract of land situate in the county of St. Clair aforesaid, beginning on the Mississippi river, at the lower corner of a tract of thirty-seven and half acres, conveyed to Robert Rankins by said Osborne in May, eighteen hundred and twenty-eight, thence continue down the river's bank eight roods, measured upon a line of the general course of the river to a post, and thence north fifty degrees east, parallel to said Robert Rankin's lower line, about forty roods to the foot of a ridge, and thence with said ridge northwardly to Robert Rankin's corner, and thence with said Rankin's line south fifty degrees west to the beginning; also a tract of land in said

county of St. Clair, containing thirty-seven acres and fifty hundredths of an acre, bounded north by land of Matthew Kerr, east by land of Thomas Osborne, south by tract of land last above herein described and conveyed, and west by the Mississippi river, being the same land conveyed to said Samuel Wiggins by Robert Rankin, by deed dated the day of June last past, and which was conveyed to said Rankin by said Osborne; also all rights, privileges, and benefits connected with or appurtenant to said lands or any of them of ferrying across the river Mississippi, and all rights and benefits touching the ferry established and carried on there by said Samuel Wiggins, conferred on him by the Legislature of the State of Illinois, by an act entitled an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi, approved March the second, eighteen hundred and nineteen, and also by an act of the same Legislature, entitled an act to authorize Samuel Wiggins to make a turnpike road, and for other purposes, approved February 6th, in the year eighteen hundred and twenty-one, and by any other acts, laws, grants, licenses, or authority under the State of Illinois or of Missouri or under the United States, or from any other source whatsoever; also the steam ferry-boat and the horse now running and employed by said Samuel in ferrying across from St. Louis, together with the horses, oxen, takle, apparel, and furniture of said boats, or connected with them, or employed in said business of ferrying there, and all the planks, wood, timber, carts, utensils, and personal property whatsoever now on said land. To have and to hold said several tracts of land above described, and said rights and privileges of ferrying and said boats and appendages, tackle, and said personal property above mentioned, and all rights and privileges connected with said lands or appurtenant thereto, or to any part thereof unto them, said parties of the second part, their heirs and assigns forever, as tenants in common in the following proportions, to wit, the one undivided fourth part of said lands, rights, and property to said O'Fallon, his heirs and assigns, the one undivided fourth part thereof to said Adam L. Mills, his heirs and assigns, the one undivided eighth part thereof to said Bernard Pratte, Senior, his heirs and assigns, the one undivided eighth thereof to said Mulliken, his heirs and assigns, the one undivided eighth part thereof to said William C. Wiggins, his heirs and assigns, and the other eighth part thereof to Samuel C. Christy, his heirs and assigns; and the said Samuel Wiggins, for himself, his heirs, executors, administrators, doth covenant and agree with said O'Fallon, Mills, Pratte, Mulliken, Christy, and William C. Wiggins, their heirs and assigns, that he doth and will forever warrant and defend said lands, rights, and personal property to the said parties of the second part, their heirs and assigns, only as against himself, the said Samuel Wiggins, and all persons lawfully complaining or to claim by, through, or under him; and the said Samuel, for himself, his heirs, executors, and administrators, doth further covenant and agree with said par-

ties of the second part, their heirs and assigns, that in case said parties of the second part, their heirs and assigns, shall at any time hereafter be lawfully evicted and ejected from said lands, or from any part of it, then and in every such case the said Samuel Wiggins or his heirs or representatives shall pay to said parties of the second part, their heirs or assigns, forthwith at the rate of ten dollars per acre of said land for so much as they shall have been so ejected from.

In testimony whereof, the said Samuel Wiggins' parties have hereto set their hands and seals, the day and year first above written.

SAMUEL WIGGINS, [L. S.]
CORNELIA WIGGINS. [L. S.]

Signed, sealed, and delivered in presence of
LYMAN B. SHAW,
HENRY CHOTEAU.

STATE OF MISSOURI, *County of St. Louis.*

Be it remembered, that on this first day of August, in the year of our Lord eighteen hundred and thirty-one, before me, the clerk of the county court within and for the county aforesaid, personally came Samuel Wiggins and Cornelia his wife, both personally known to me to be the real persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein expressed. She, the said Cornelia, being by me first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed the same deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed, and relinquished her dower in the said lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand and the seal of said county court at the city of St. Louis, the day and year aforesaid. [L. S.]

HENRY CHOTEAU, *Clerk.*

STATE OF ILLINOIS, *St. Clair County.*

RECORDER'S OFFICE, 14*th August*, 1831.

I do hereby certify that the within deed and foregoing certificate were this day truly recorded in Book F, pages 457, 458, and 459, of this office.

JOHN HAY,
Recorder St. C. C.

Document No. 5.

James Madison, President of the United States of America, to all whom these presents shall come, greeting:

Know ye that John McKnight and Thomas Brady, assignees of the heirs of James Piggott, having deposited in the General Land Office a certificate numbered thirty of the register of the land office at Kaskaskia, whereby it appears that in pursuance of an act of Congress passed on the 16th of April, 1814, entitled an act confirming certain claims to land in the Illinois Territory, and providing for their location, the said John McKnight and Thomas Brady are confirmed in their claim (as the legal representatives of the heirs of James Piggott) for one hundred acres of land, (being James Ware's militia claim) numbered four hundred and eighty-nine, and survey number six hundred and twenty-four on the connected plat of the Kaskaskia district returned by the surveyor general.

There is therefore granted by the United States unto the said John McKnight and Thomas Brady, the tract of land above described, to have and to hold the said tract, with the appurtenances unto the said John McKnight and Thomas Brady, their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof I have caused these letters to be patent, and the seal of the General Land office to be thereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of September, in the year of our Lord [L. S.] one thousand eight hundred and sixteen, and of the Independence of the United States of America the forty-first.

By the President,

JAMES MADISON.

JOSIAH MEIGS,
Commissioner of the General Land Office.

[See original page 42.]

SURVEYOR'S OFFICE, ST. LOUIS, *26th April*, 1839.

The above plat of that part of fractional township 2 north, 2 range, 10 west of the 3d principal meridian, in the State of Illinois,

which lies north of a part of the commons of Cahokia, is correctly copied from the township plat No. 2, of volume 19, Illinois plats in this office.

Signed MILBURN,
Surveyor General.

Note.

The survey No. 786 of the heirs of Pierre Condaire for 400 acres, begins at northwest corner of survey No. 766, and runs thence with the northern line of said survey to B, on the northwest boundary of surveys No. 626, thence south 4775, west with the said boundary of survey No. 626 to C, the northwestern corner thereof, thence southeast with the western boundary of said survey No. 626, to D, on the bank of river Labbé or Cahokia creek, thence down said creek, with different courses thereof, to E, the corner of the survey of a part of Cahokia common, thence with the north boundary of the survey of a part of the Cahokia common to F, on the east bank of the Mississippi river, thence up the Mississippi river, and binding to A, the point of beginning.

Signed WILLIAM MILBURN,
Surveyor General.

Document No. 6.

This indenture, made this nineteenth day of May, in the year of our Lord one thousand eight hundred and twenty-one, between John McKnight, and Thomas Brady, and Harriet Brady, his wife, all of the town of St. Louis, of the first part, and Samuel Wiggins, of the same place, of the second part:

Witnesseth that the said parties of the first part, for and in consideration of the sum of seven thousand dollars, lawfull money of the United States, to them in hand paid, by the said party of the second part, his receipt whereof is hereby confessed, acknowledged, do grant, bargain, sell remise, release, alein and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in the county of St. Clair, and State of Illinois, containing sixty-eight acres and one hundred and twenty-five thousands of an acre, being the southern part of a certain tract of land, being the grant of militia right, made by Gl. William Henry Harrison, Governor of the Indiana Territory, to James Piggott, deceased, as assigne of one James Wod, by patent, being date at Vincennes, on the twelfth day of March, one thousand eight hundred and three, and recorded in the United States land office, for the district of Kaskaskia, in book A, page 74 and 75, the sixth day of December, one thousand eight hundred and four, bounded as follows: beginning at a walnut on the bank of the Mississippi river, thence south five degrees, west two hundred and eighteen perches to a cotton wood, thence south eighty-five

degrees, east seventy-three and one-half perches to an elm, thence to the five degrees east two hundred and eighteen perches to a sycamore, thence north eighty-five degrees, east seventy-three and a half perches to the place of beginning, joining the Mississippi on the south, vacant land on the southeast, Cahokia fields on the northeast, and vacant land on the northwest, containing one hundred acres and twenty-three perches, as in the said patent described, as will appear by the conveyance of the whole of said land from Joseph Piggott and Harriet, his wife, Daniel Gurick and Nancy, his wife, formerly Nancy Piggott, William Patterson and Asineth, his wife, formerly Assineth Piggott, Newton Piggott, to the said John McKnight and Thomas Brady, by deed, bearing date January 4, 1815, and by a release of dower from Francis Collard to the said John McKnight, Thomas Brady, by deed bearing date January 10, 1815, which was also granted by letter patent from the United States to the said John McKnight and Thomas Brady, and which property was afterwards divided between the said Samuel Wiggins, and the said John McKnight, and Thomas Brady, by order of the circuit court of the county of St. Clair, in the State of Illinois; and the said sixty-eight acres and one hundred and twenty-five thousand, were allotted and set off as the *the* part of the said John McKnight and Thomas Brady, as by the records remaining in said court, will more fully and at large appear, together with all and singular the heriditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion or reversions, remainder and remianders, rents, issues and profits thereof, and also all the estate, right, title and interest, claims and demands whatsoever, of them, the said parties of the first part, whether in law or equity, of, in and to the above bargained premises, and every part and parcel thereof; and the said parties of the first part for the consideration above mentioned, do, by these presents, also bargain, release and quit claim unto the Samuel Wiggins, and to his heirs and assigns forever, all their right, title, claim, interest, estate or demand, either at law or equity, of, in and to the residue of the said tract above described, exclusive of the said sixty-eight acres and one hundred and twenty-five thousands, and also to any claim of dower to the whole or to any part of the said tract, or to any right of ferriage under any existing laws of the State of Illinois, or otherwise howsoever, or any claim, right or demand whatsoever, belonging or appertaining, or in any wise appertaining to the said premises or any part or parcel thereof, to have and to hold to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said John McKnight and Thomas Brady, and their heirs, covenant with the said Samuel Wiggins, and his heirs and assigns the title to the said sixty-eight acres and one hundred and twenty-five thousands, to warrant and defend against the claim and demands of all persons whatsoever, unto the said Samuel

Wiggins, his heirs and assigns forever; provided however, that if at any time the title to the said sixty-eight acres and one hundred and twenty-five thousands, and shall and do fail, that then the said John McKnight and Thomas Brady shall only be answerable for the original consideration money of seven thousand dollars above mentioned, with interest from the date thereof.

In witness whereof the said parties of the first part, have hereunto set their hands and affixed their seals, the day and year first above written.

JOHN McKNIGHT, [L. S.]
THOMAS BRADY, [L. S.]
HARRIETT BRADY, [L. S.]

Sigined sealed and delivered in the presence of
EWEL BAKER.

STATE OF ILLINOIS, *County of St. Louis, ss.*

This day personally appeared before me, the undersigned, deputy clerk, within and for the county of St. Louis, the above named John McKnight, Thomas Brady and Harriet Brady, and severally acknowledge the foregoing deed to be their act and deed, hand and seal, for the purposes therein contained; and the said Harriet, wife of the said Thomas, being by me, separate and apart from her said husband examined, acknowledged that she signed the same freely, voluntarily and without fear, restraint, constraint, or undue influence of her said husband.

Given under my hand and seal this nineteenth day of May, 1821.

ARCHIBALD GAMBLE, *Clerk.*
By EWEL BAKER, *Deputy Clerk.*

STATE OF ILLINOIS, *St. Clair County.*

I, John Hay, recorder of the said county of St. Clair, do hereby certify to have recorded the within instrument of writing, this thirtieth day of May, A. D. eighteen hundred and twenty-one, in book E, page 48 and 49.

Given under my hand at Bellville, the day and year aforesaid.

JOHN HAY.

Document No. 7.

No 7.

This deed made the first day of February, eighteen hundred and thirty-eight, witnesseth, that John O'Fallen and Caroline his wife, of the county of St. Louis and State of Missouri, in consideration of

six thousand five hundred dollars to us in hand paid, by John H. Gay, of the county of St. Louis and State of Missouri, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm, to the said John H. Gay, his heirs and assigns forever, one-eighth, being the half of said O'Fallan's wife's right, title, and interest, to a tract of four hundred acres; a tract of three hundred and sixty-nine 23–100 acres, frac. secs. 1, 2, 11, 12, in town two north of range ten west; this land is opposite to the upper part of the city of St. Louis. A tract of thirty-seven and a half acres acquired by Robert Rankin of Thomas Osborn, as well as another tract acquired by Samuel Wiggins of said Osborn south of this last named, all situate in the county of St. Clair, State of Illinois, together with all rights, privileges, and benefits, connected with or appurtenant to said lands or any part of them, of ferrying across the river Mississippi. And said O'Fallon and wife's half of any interest acquired of Samuel Wiggins and wife by deed dated August 1st, 1831, to have and to hold the same with the privileges and appurtenances thereunto belonging, to the said John H. Gay's heirs and assigns forever. The said John O'Fallon and Caroline his wife hereby covenant, that they and their heirs, executors, administrators, will warrant and defend the title to the said premises, to the said John H. Gay, his heirs and assigns forever, against all persons lawfully claiming or to claim the same whatever, by, through, or under them, and none other.

Witness whereof the said John O'Fallon and Caroline his wife, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered, in presence of

J. O'FALLON, [L. S.]
CAROLINE O'FALLON, [L. S.]

STATE OF MISSOURI, *County of St. Louis.*

Be it remembered, that on this twenty-eighth day of February, eighteen hundred and thirty-eight, before me the undersigned, clerk of the circuit court within and for the county aforesaid, came John O'Fallon and Caroline his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; the said Caroline being by me first made acquainted with the contents thereof, acknowledged, on examination apart from her said husband, that she executes the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at office, in the city of St. Louis, the date last aforesaid. [L. S.]

JNO. RULAND, *Clerk.*

STATE OF ILLINOIS, *St. Clair County.*

RECORDER'S OFFICE, 23 *May*, 1838.

I do hereby certify that the within deed and certificate were this day truly recorded in book T, page 285, of this office.

JOHN HAY,
Recorder S. C. C.

Copy of Exhibit No. 9.

This article of agreement made this sixth day of May, in the year eighteen hundred and thirty-seven, between Adam L. Mills of St. Louis, party of the first part, and Andrew Christy of the same place of the second part, witnesseth; that whereas Samuel Wiggins and wife by their deed dated the first day of August, eighteen hundred and thirty-one, made to the said Mills, John O'Fallon, and others, conveyed to said Mills the one undivided fourth-part of sundry tracts of land lying opposite to and near the city of St. Louis, and of the privileges of ferrying attached thereto, or belonging to said Wiggins, under certain acts of Assembly of the State of Illinois, and of the ferry-boats, horses, oxen, utensil, and other effects connected with said ferry on said canal; and whereas Melani Christy, by deed dated the twenty-fifth day of April, of this same year, conveyed to said Mills the one undivided fourth of a tract of land in Madison county, Illinois, about twelve miles above St. Louis, lying on the Mississippi river, containing three hundred and twenty acres, for which tract of land the said Mills, O'Fallon, and others, composing the ferry company, still owe the sum of two thousand five hundred and thirty-three dollars thirty-three and a third cents, and whereas said Mills has agreed to sell to said Christy the one half of two interests in said lands and in said ferry-boats, and privileges, property, and utensils, and the said Christy has agreed to purchase the same, and to become one of said company. Now, therefore, the said Christy agrees to pay said Mills, or his representatives, three thousand dollars in ninety days from the date hereof; and one thousand dollars in twelve months from this date; one thousand dollars in eight months from this date; one thousand dollars in two years from this date; one thousand dollars in thirty months from this date; and one thousand dollars in three years from this date; all said sums bearing interest from date, at the rate of six per cent. per annum. And said Christy further promises to pay the one eighth part of the debt aforesaid, of two thousand five hundred and thirty-three dollars thirty-three and a third cents, and to be bound by the covenants, agreements, stipulated among the members of said ferry company, in the same manner as if he had signed originally the articles of agreement and partnership between them; and the said Mills for himself, and his heirs and representatives, covenants with said Christy his heirs and assigns, that at the end of one year from this date, if four thousand dollars and interest

shall have been paid by said Christy or his representatives, that we his heirs or assigns will make, execute, and deliver, to the said Christy or to his representatives, a good andsufficient general warrentee deed of the one undivided eighth of all the tracts of land described and conveyed by said deed of Wiggins and wife, and of the right of ferrying connected therewith, or which are mentioned in said deed, and of the said tract of land in Madison county acquired from Melanie Christy, and of all the boats, and furniture, and utensils, animals, and effects, of said ferry company as the same exists at this time. And it is further agreed, that when said deed shall be executed to said Christy or his representatives, there shall be executed a mortgage on the interest conveyed to secure the purchase money not then paid; and further, that in case the title should fail as to any of the lands conveyed, and said Mills or his representatives become liable on his warrantee in said deed, said Mills or his representatives shall be bound to pay only at the rate of ten dollars an acre for the land lost in St. Clair county, fifteen dollars for the land that may be lost in Madison county per acre.

In testimony whereof said parties have hereto set their hands and seals, the day and year first above written.

A. L. MILLS, [L. S.]
A. CHRISTY. [L. S.]

Signed, sealed, and delivered, in presence of
SAMUEL C. CLARK,
JOHN M. MASSEY.

Copy of Exhibit No. 10.

An Act to authorize Samuel Wiggins to establish a ferry on the waters of the Mississippi, approved March 2d, 1819.

Sec. 1. Be it enacted by the people of Illinois represented in the General Assembly, that Samuel Wiggins, his heirs and assigns, &c., and they are hereby authorized to establish a ferry on the waters of the Mississippi river, near the town of Illinois, in this State, and to run the same from lands at the said place that may belong to him, provided that he shall not use any boat or water craft except such as shall be propelled or urged through the water by steam, horses, oxen, or other four footed animals, provided also, that the same Samuel Wiggins, his heirs or assigns, shall have the said ferry in actual operation within eighteen months from and after the passage of this act.

Sec. 2. And be it further enacted, That no person nor persons except those who have ferries now established at this place shall establish any ferry of the description aforesaid, within one mile of the ferry established under this act, and if any person or persons shall, contrary to the provisions of this act, run any boat or boats of the description aforesaid, he, she, or they shall forfeit every such

boat with its furniture and apparel, to said Samuel Wiggins, his heirs and assigns, which may be attached and recovered before any court in this State having competent jurisdiction.

Sec. 3. And be it further enacted, That it shall and may be lawful for the said Samuel Wiggins, his heirs or assigns, to demand and receive the same rates of ferryage as are now of right demandable at the ferry established nearest to the ferry authorized to be established by this act, provided that no more shall be charged for a waggon, cart, or other carriage, if loaded, than could be charged if empty.

Sec. 4. And be it further enacted, That the ferry newly established, shall be subject to the same taxes as are now or hereafter may be emposed on other ferries within this State, and under the same regulations and forfeitures, and that if the provisions of the second section of this act should be made to appear to the General Assembly to be injurious to the public good, that then and in such case the said second section may be repealed.

Copy of Exhiibit No. 11.

An Act to authorize Samuel Wiggins to make a turnpike road, and for other purposes.

Sec. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, that Samuel Wiggins, his heirs or assigns, be and they are hereby authorized to make and construct a turnpike road of one hundred feet wide, to commence on the Mississippi river opposite to St. Louis, on lands that may belong to him, to run thence across the American bottom, to the bluffs within two miles of George Swaggart's, and to construct and erect all necessary bridges on said road, and that he or they be and hereby authorized to build and make said turnpike road through the lands of any persons or person whomsoever, except yards, gardens, orchards, or dwelling houses; that when the aforesaid road is about to be carried through any improved lands, the maker of said road shall first obtain the consent of the proprietor or proprietors of said ground, and should the parties not agree on the amount of said damages, then a jury of six reputable freeholders should be summoned and duly sworn before any justice of the peace of the county, faithfully and impartially to assess the damages, whose damages shall be paid before said road shall be permitted to pass through such ground.

Sec. 2. And be it further, That as soon as the said Samuel Wiggins, his heirs or assigns, shall have completed the said road, it shall be lawful for him or them to give notice thereof to the person administering the government of the State for the time being, who shall thereupon forthwith appoint three discreet freeholders to view the same, and report to him in writing whether the same is completed in a workmanlike and substantial manner, and upon

their report in the affirmative, it shall be the duty of the person administering the government of the State, and he is hereby required to issue a license under the seal of the State, permitting the said Samuel Wiggins, his heirs or assigns, to erect a toll gate and to collect and receive the tolls and duties hereinafter granted and allowed, from all persons travelling on or using the same.

Sec. 3. Be it further enacted, That it shall and may be lawful for the owners of any lands through which said road may pass at any time within twelve months after the license aforesaid may be issued, if he or they shall conceive that they have sustained any damages from the road having passed through their lands, to file an affidavit in the commissioners' court of the county in which the lands are situated, and stating that they have sustained damages from the passage of said road through their land, whereupon it shall be the duty of the commissioners' court to appoint three discreet freeholders of the county, but not of the immedite neighbourhood of the road, to estimate the damages such persons may have sustained by the road having passed through his land, and the commissioners, when appointed, shall give notice of the time and place of meeting, whence they shall proceed to examine the ground, and shall make out under oath the damages such persons may have sustained, and shall make a statement thereof in writing, and deliver the claim in ten days thereafter to the clerk of the commissioners' court, who shall record and preserve the same, for which service the clerk shall be allowed the fees of the recorder of the county, and the valuers shall be allowed each three dollars each per day for the time they shall be necessarily employed in making said valuation, and the sum so awarded as aforesaid may be recovered from the said Samuel Wiggins, his heirs or assigns, in any court having competent jurisdiction.

Sec. 4. Be it further enacted, That the commissioners' court of the county in which the said road may be situated, shall be and are hereby authorized and required to fix the rates of toll to be collected and received as soon as the license above mentioned shall be obtained, and the said Samuel Wiggins, his heirs and assigns, are authorized and empowered to collect and receive the rates of toll so established, from all persons using said road; provided, however, that the said commissioners' court shall not be authorized to fix any rates of toll lower than the following: for a man and horse twelve and a half cents, for one horse waggon or carriage twenty-five cents, for all other waggons and carriages six and a fourth cents for each wheel and each horse, for single horses and cattle six and a fourth cents each, for hogs and sheep two cents each per head. And whereas the said Samuel Wiggins, his heirs or assigns were authorized to established a ferry upon the waters of the Mississippi river, near the town of Illinois, in this State, and a sand bar having been formed since that time opposite said ferry, therefore—

Sec. 5. Be it further enacted, That the said Samuel Wiggins, his heirs or assigns, be and they are hereby authorized to remove

said ferry on any land that may belong to him or them on the said Mississippi river, under the same privileges as were presented by the act entitled an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi, approved March 2, 1819.

Sec. 6. Be it further enacted, That if the county in which said road is situated, shall at any time be willing to pay the original cost of said road with six per cent. interest thereon, to the said Samuel Wiggins, his heirs or assigns, then the said road and bridge thereon, shall become a public highway.

Approved, February 6, 1821.

STATE OF ILLINOIS, *St. Clair County ss.*

I, John Hay, clerk of the circuit court for the said county of St. Clair, do hereby certify, that foregoing exemplification containing twenty-five pages are a true transcript of the exhibits or documents referred to in the complainants' bill, in this case above mentioned, on the first page hereof.

In testimony hereof, I have hereunto set my hand and affixed the seal of said court, at office, in Bellville this 28th day of January, 1840.

JOHN HAY.

And afterwards, to wit, at a Supreme Court began and held at Springfield on Monday the ninth day of December, A. D. 1839.

Present the Hon. WILLIAM WILSON, *Chief Justice.*
SAMUEL D. LOCKWOOD,
THEOPHILUS W. SMITH, } *Justices.*
THOMAS C. BROWNE.

Viz: On Monday December sixteenth, of the term aforesaid.

ADAM L. MILLS and others,
vs. } Appeal from St. Clair.
THE COUNTY OF ST. CLAIR.

Ordered that this cause be set for hearing on the 30th instant.

And afterwards on the 31st day of December, of the term aforesaid.

ADAM L. MILLS and others,
vs. } Appeal from St. Clair.
THE COUNTY OF ST. CLAIR,

At this day came the parties aforesaid, again, and the errors being assigned, and issue joined, this cause was argued in part by Mr. Gamble for plaintiffs.

Court adjourned till 3 o'clock P. M.

Present all the Justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

Mr. Gamble concluded his argument on behalf of the plaintiffs.

And afterwards, to wit, on the second day of January, 1841, of the term aforesaid.

Present all the Justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

Mr. Trumbull continued the argument in the above entitled cause on behalf of the defendant.

And afterwards, to wit, on the third day of January, of the term aforesaid.

Present all the Justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

Mr. Shields continued the argument in this cause on behalf the plaintiffs.

And afterwards, to wit, on the sixth day of January, of the term aforesaid.

Present all the Justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

Mr. Butterfield continued the argument in this cause on behalf of the defendants.

Ordered that court adjourn until half past two o'clock.

Half past two o'clock, court met pursuant to adjournment.

Present all the justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

Mr. Butterfield concluded his argument in this cause on behalf of the defendants.

And afterwards, to wit, on the seventh day of January, of the term aforesaid.

Present all the Justices.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR, } Appeal from St. Clair.

Mr. Logan concluded the argument in the above cause in behalf of the Plaintiffs.

The court not being sufficiently advised, took time, &c.

Ordered that this cause be continued till the next term of this court.

And afterwards, to wit, at a Supreme Court began and held at Springfield, on Monday the first day of June, A. D. one thousand eight hundred and forty.

Present the Hon. SAML. D. LOCKWOOD, THEOPHILUS W. SMITH, THOMAS C. BROWNE, } Justices.

Viz. On Tuesday, June twenty-third, of the term aforesaid.

ADAM L. MILLS and others, *vs.* THE COUNTY OF ST. CLAIR. } Appeal from St. Clair.

At this day came again the parties aforesaid, by their attorneys aforesaid, and the court having diligently examined the records and the proceedings aforesaid, and being now sufficiently advised of and concerning the premises; for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendering of the judgment aforesaid, is there any thing vicious or defective, and that that record was no error. It is considered that the judgment aforesaid, shall be affirmed in all things, and stand in full force and effect, notwithstanding that the said matters and causes above assigned for error; and further it is considered by the court now here, that the said defendants do recover against the said plaintiffs their costs in this behalf expended, and that they have execution therefor.

Opinion of the Court by Justice Smith.

It is discovered, upon an examination of the bill in this cause, that there is a serious defect in the statement of the complainant's title to the land, which materially affects the claim for the relief sought by the complainant.

The act of the General Assembly of the State of Illinois of the 2d March, 1819, under which the complainants derive their title to the ferry and ferry privileges, described in the bill, as the assig-

nees of Samuel Wiggins, the grantee named in the act, authorized the establishment of such ferry, on the waters of the Mississippi, near the town of Illinois in this State, and "the running of the same from lands at said place that may belong to him" (Wiggins;) and the act further provided that "Wiggins. his heirs and assigns, should have the ferry in actual operation within eighteen months from and after the passage of the act."

The time within which Wiggins was to establish the ferry and have it in actual operation, and by which the grant was to be in operation, in case it was not established and in operation by that period, expired on the 2d day of September, 1820.

In the description of the land, and its mode and time of acquisition, the bill recites that Wiggins became the purchaser thereof from Julia Jarrot, by deed of the 13th day of July 22, 1832; and that Wiggins, by deed of the first day of August, 1831, conveyed the same lands to a portion of the complainants, and to the ancestors of others of the complainants, of whom they are the legal representatives.

It is further recited in the bill that a piece of said tract of land, lying on the Mississippi, near the centre of the tract, was claimed by one James Piggot, which claim was recognized by government and a patent issued therefor; and that Wiggins acquired this piece several years before the date of the deed from Julia Jarrot to him, and first established his ferry on this piece, then being the owner thereof, under Piggot's legal representatives; which piece of land is included in the large tract, and was patented by the United States to John McKnight and Thomas Brady in 1816, and was conveyed by them to Wiggins by deed, copies of which papers and deed are said to be exhibited with *with* the bill. This is the entire description in the bill of the inception of title to the lands by Wiggins.

With the bill no exhibits are, however, transcribed into the record, and we are consequently uninformed as to the contents or character of the conveyance from McKnight and Brady to Wiggins, and from Piggot's legal representatives, either in point of date, or description of land.

The act of 1819 declares that the ferry shall be run from lands, named in the act, "that may belong to him" (Wiggins.)

The question here, in construing the first section of the act of 1819, naturally arises, did the grant to Wiggins require that he should be the owner of the land, at the passage of the act; or of such as he might subsequently purchase, before the period of forfeiture of the grant. If the word may, as understood in legal parlance, be rendered shall, it is apparent that Wiggins, by the facts disclosed by the complainants in their bill, had no land at the place, designated in the law of 1819, at the time of the passage thereof; and consequently he had no estate in the lands upon which the grant could operate, and the grant was necessarily nugatory in its character, and was altogether inoperative in its effects.

On the other hand, if the grant be construed to operate on land,

which Wiggins might acquire subsequently to the passage of the act, and before the time limited for the commencement of the ferry, it is equally clear that the acquisition of the lands by Wiggins, through the purchase of Julia Jarrot, was upwards of one year and ten months after the time limited for the erection of the ferry, and consequently the grant could not attach, or act on the lands thus acquired.

As to the period of acquisition of the piece in the centre of the tract, represented to be a portion of the tract acquired from Jarrot, nothing is disclosed in the bill which affords any certainty as to time. The omission to transcribe into the records the exhibits referred to in the bill precludes the possibility of learning when the title was acquired.

The allegation in the bill that Wiggins acquired the title to this portion of the land several years before the date of the deed from Julia Jarrot, is so manifestly uncertain that no evidence is offered by the statement that the title was acquired before the 2d day of September, 1820.

The vague and indefinite character of the allegations, affords them no evidence that Wiggins was at any time before the *the* 2d of September, 1820, the owner of the lands near the town of Illinois, in the State of Illinois, contemplated in the act of 1819, and from which the ferry was to be put in operation. It may therefore be said the demurrer admits all the allegations of the bill to be true, and that therefore the complainant's title to the land cannot be questioned. It is certainly true the demurrer admits all that is well stated or pleaded, but it surely cannot supply defects in substance, or cure a defective title, nor yet establish one defectively set forth.

It is too obvious to doubt that the title acquired in 1822, could not even aid the acquisition of the privileges, conferred by the grant, much less be the foundation, on which the grant was to operate, and vest the privileges named in the law, because of the posterior period of its inception; and equally so, is the effect flowing from the want of the clear ascertainment of the title to the other portion of the land, on which it is alleged that the ferry was first established.

The conclusion then seems very certain, then, that Wiggins was not the owner of any lands, within the time required by the act of 1819 to be possessed by him, upon which the grant could operate, and upon this ground alone, the injunction might have been dissolved, and bill dismissed.

Other questions of grave import, involving the constitutional character of laws connected with the case, have been raised, and elaborately and ably discussed, upon which it does not become necessary for this court to express an opinion in order to the decision of the cause. It would, perhaps, be injudicious to express an opinion on those points at this time, when it is not absolutely necessary; but more especially so, as the questions raised, involve an

inquiry into the extent and rightful exercise of legislative action by the General Assembly of this State, which it is supposed may arise in at least one other cause now pending in this court between the same parties.

I am of opinion, for the reasons given, that the judgment should be affirmed, with costs.

Since the delivery of the foregoing opinion, the exhibits referred to in the opinion, and exhibited with the bill in the circuit court, have, by the mutual consent of counsel been filed here; on an inspection thereof, and the deed of McKnight and Brady particularly, it does not appear that any new fact is shown to induce a change of my opinion.

The title is shown by the exhibits to be most clearly defective, and all doubt removed thereon.

SMITH, *Justice.*

Opinion of the Court by Justices Wilson, Lockwood and Browne.

We concur in the opinion that the judgment of the circuit court must be affirmed, on the ground that the bill does not set out with clearness and certainty, that Samuel Wiggins owned any land on the waters of the Mississippi river, near the town of Illinois, on the 2d March, 1819, nor within eighteen months thereafter on which, the grant of the Legislature could operate; nor does it appear with certainty that Samuel Wiggins owned any land on the Mississippi river on the 6th February, 1821, to which the ferry theretofore established by said Wiggins could be removed in pursuance of the act passed on the 6 February, 1821.

SAM'L. D. LOCKWOOD,
WM. WILSON,
THOMAS C. BROWNE.

I, James M. Duncan, clerk of the supreme court of the State of Illinois, do hereby certify that the above is a true and correct copy of the record and proceedings and papers in this cause in the circuit court of St. Clair county, State of Illinois, on file by appeal, in my office, and a true and correct copy of the proceedings in the above entitled cause in the supreme court of the State of Illinois aforesaid.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said supreme court of the State of Illinois, this twenty-eighth day of December, A. D. one thousand eight hundred and forty.

[L. s.]

J. M. DUNCAN,
Clk. S. C. Ill.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United to the Honorable the Supreme Court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court for the State of Illinois, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Adam L. Mills, John H. Gay, Charles Mullikin, John O. Fallon, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, (which said Joseph A. Christy, Elizabeth Christy and Mary F. Christy being infants, sue by their next friend Melanie Christy,) Emily Pratt, widow of Bernard Pratt, dec., Emilie, his daughter, wife of Ramsay Crooks, Ramsay Crooks, Bernard Pratt, Lewis Pregnet, & Therese, his wife, Steph. F. Niedlet, and Celeste, his wife, Lewis V. Bogy, and Pelagie, his wife, and Joseph Blair, and Diane, his wife, complainants, against William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the county of St. Clair, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in qnestion the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error happened to the great damage of the said Adam L. Mills, Jno. H. Gay, Chs. Mullikin, John O. Fallon, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, Emily Pratt, Emilie Crooks, Ramsay Crooks, Bernard Pratt, Lewis Pregnet, and Therese, his wife, Stephen F. Niedlet, and Celeste, his wife, Lewis V. Bogy, and Pelagie, his wife, and Joseph Blair and Diane, his wife, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court

to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court this sixth of July, in the year of our Lord one thousand eight hundred and forty.

JAMES F. OWINGS,
Clerk of the Circuit Court of the United States for the District of Illinois.

Allowed by THOMAS C. BROWNE,
One of the Judges of the Sup. Ct. State Ill.
6th July, A. D. 1840.

And afterwards, to wit, on the sixth day of July, A. D. 1840, the plaintiff prayed a writ of error, and filed the following bond, to wit:

Know all men by these presents, that we, Adam L. Mills and Robert Irwin, are held and firmly bound unto William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the county of St. Clair, in the full and just sum of one thousand dollars, to be paid to the said William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the county of St. Clair, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this sixth day of July, in the year of our Lord one thousand eight hundred and forty.

Whereas, lately, at a term of the supreme court for the State of Illinois, held in June, eighteen hundred and forty, in a suit depending in said court between Adam L. Mills, John H. Gay, Charles Mullikin, John O. Fallon, William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, Emily Pratt, Emilie Crooks, Ramsay Crooks, Bernard Pratt, Lewis Pregnet and Therese, his wife, Stephen F. Niedlet and Celeste, his wife, Lewis V. Bogy and Pelagie, his wife, and Joseph Blair and Diane, his wife, complainants, and said William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the county of St. Clair, a decree was rendered against the said Mills, Gay, Mullikin, O'Fallon, Wiggins, A. Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary F. Christy, Pratt, Crooks and wife, B. Pratt, Pregnet and wife, Niedlet and wife, and Blair and wife; and the said Adam L. Mills and others having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the decree